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*Kevin L. Smith*

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**BARNES, Judge**

## **Case Summary**

Carlos Robles appeals his convictions for operating while intoxicated (“OWI”) while having a prior conviction for OWI, operating a vehicle with at least .15 grams of alcohol with a prior conviction, and of being an habitual substance offender. We affirm.

## **Issue**

Robles raises one issue for our review, which is whether sufficient evidence of past OWI convictions existed to support the three convictions.

## **Facts**

Robles rear ended Ryan and Jennifer Kindig’s minivan near Lafayette on December 9, 2006. Robles did not stop and the Kindigs followed him, got his license plate number, and called police. Deputy John King spotted Robles’s vehicle in a nearby subdivision. Deputy King ordered Robles from the vehicle and noticed an unsteadiness in Robles’s balance and the odor of alcohol. Robles identified himself as Carlos Mendoza, which matched the name registered to the Illinois plate on the vehicle. Dispatch advised Deputy King that Carlos Mendoza was an alias for Carlos Robles. While Deputy King attempted to handcuff him, Robles made a throwing gesture. Deputy King recovered eleven baggies with a powdery substance, later identified as cocaine, under the vehicle. Robles failed four sobriety tests administered on the scene.

On December 11, 2006, the State charged Robles with Class A felony dealing in cocaine, Class C felony possession of cocaine, Class D felony operating while an habitual traffic offender (“HTV”), Class A misdemeanor OWI, Class A misdemeanor operating a vehicle with at least .15 grams of alcohol, Class D felony OWI while having a prior

conviction for OWI, Class D felony OWI with .15 grams of alcohol with a prior conviction, and with being an habitual substance offender.

On July 23, 2007, Robles pled guilty to operating while an HTV. Robles also waived his right to a jury trial on the three habitual counts involving his prior convictions, counts VI, VII, and VIII. A two day trial was held on the four remaining counts—Class A felony dealing in cocaine, Class C felony possession of cocaine, Class A misdemeanor OWI, and Class A misdemeanor OWI with at least .15 grams of alcohol. The jury found Robles guilty of three counts: Class C felony possession of cocaine, OWI, and OWI with at least .15 grams, both Class A misdemeanors.

The trial court held a separate bench trial for the habitual charges in counts VI, VII, and VIII. The State introduced records from the Bureau of Motor Vehicles (“BMV”) and Tippecanoe and White County for evidence of prior convictions. The trial court found Robles guilty of all three. This appeal followed.

### **Analysis**

Robles argues that the State presented insufficient evidence to prove his prior OWI convictions. Those convictions provided the necessary criminal history for the basis of the habitual charges in counts VI, VII, and VIII. Upon a challenge to the sufficiency of evidence to support a conviction, we do not reweigh the evidence or judge the credibility of the witnesses, and we respect the trier of fact’s exclusive province to weigh conflicting evidence. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). We must consider only the probative evidence and reasonable inferences supporting the verdict. Id. If the probative evidence and reasonable inferences drawn therefrom could have allowed a

reasonable trier of fact to find the defendant guilty beyond a reasonable doubt, we must affirm the conviction. Id.

The evidence submitted by the State consisted primarily of court documents, but all three sets of records do not contain identical names, birth dates, addresses, driver's license numbers, or social security numbers. The State entered the evidence as exhibits 8 through 11 during the bifurcated phase of the trial. Exhibit 8 consisted of BMV records for Carlos Mendoza with a birth date of January 16, 1979. Exhibit 9 includes records in cause number 91D01-0008-CM-609 in White Superior Court. The name of the charged defendant is Carlos Mendoza, the birth date is January 16, 1979, and the address is 3603 Hampton Drive, Lafayette, Indiana. An OWI conviction was entered in the case on August 30, 2000. Exhibit 10 includes a set of records in cause number 79D06-0204-FC-81 in Tippecanoe Superior Court. The name of the defendant is Carlos Mendoza, the date of birth is January 16, 1979, the social security number is one digit different than the number included in the White County records, and the address is Lot 13 Point East MHP, Lafayette, Indiana. An OWI with prior OWI conviction was entered in the case on September 9, 2005 for an April 2002 incident. Exhibit 11 consisted of records from Tippecanoe County in cause number 79D06-0506-FD-152. The named defendant was Carlos Robles aka Raul Samano, Carlos B. Arroyo with a birth date of November 11, 1982. The address listed was 3615 Liberty Avenue Apt C, Lafayette, Indiana. Convictions for Class D felony OWI with a prior OWI and Class D felony identity deception were entered on September 9, 2005 pursuant to a guilty plea for a June 2005 incident. The BMV records listed the Hampton Drive address from the White County

records and the Liberty Avenue address from the Tippecanoe County records as past addresses. The BMV records also reflect the August 30, 2000 OWI conviction in White County and the September 9, 2005 OWI conviction in Tippecanoe County, and a license suspension from August 2003 to August 2013.

The charging documents in the instant case include three aliases, Carlos Mendoza, Carlos B. Arroyo, and Carlos Arroyo-Bargas, a birth date of January 16, 1981, and an address of 2012 Crowfoot Drive, Lafayette, Indiana. Clearly, there are some minor discrepancies in the birth dates and names. The State relies on Hernandez v. State, 716 N.E.2d 948 (Ind. 1999), for the proposition that certified copies of judgments containing a defendant's name or similar name may be introduced to prove the commission of prior felonies. In Hernandez, a witness identified the defendant as the same person pictured in the set of records. Here, the State merely introduced the evidence into the record and made a statement that it also moved to admit all previous testimony. See Tr. p. 242. No accompanying testimony or photographic evidence was entered to confirm that the records named Robles. This is especially important since the records contained different names and varied birth dates. Robles, however, testified that his full name was Carlos Mendoza Robles, which does clarify some of the confusion.

“Certified copies of judgments or commitments containing a defendant's name or similar name may be introduced to prove the commission of prior felonies.” Schlomer v. State, 580 N.E.2d 950, 958 (Ind. 1991). Even in Schlomer, however, the State did not merely enter documentary evidence of former convictions. A police officer involved in the former conviction identified Schlomer in court. Identity may be proven by

circumstantial evidence. See Tyson v. State 766 N.E.2d 715, 718 (Ind. 2002) (holding that information, plea agreement and court minutes with matching cause numbers, names, and identifying information were sufficient to prove previous convictions); Andrews v. State, 536 N.E.2d 507, 508 (Ind. 1989) (observing photographs, descriptions, and fingerprints in out of state department of correction's records matched the defendant); Coker v. State, 455 N.E.2d 319, 322 (Ind. 1983) (acknowledging additional evidence of identity included testimony of court reporter and the transcript of a prior trial where defendant served as a witness and admitted his past convictions).

The State contends that the circumstantial evidence here consists of Robles's known aliases, his admission that his full name includes "Mendoza," the match of driver's license numbers in two of the records, the similarity of the month and date being the same of the varied birth dates listed, and the fact that Robles in the past was convicted of identity deception. The State argues that identity deception is Robles's modus operandi and that the trial court identified his pattern of providing aliases to law enforcement.

Although the State could have provided more evidence to establish Robles's identity, a fact that is not lost on us, a careful examination of the record reveals that there is sufficient evidence that the prior convictions belong to Robles. During his guilty plea hearing, Robles admits that his license was suspended from August 2003 to August 2013. These dates match the suspension notice in the BMV records submitted in Exhibit 8. We find that this similarity eliminates any confusion as to the identity of Robles and establishes the link to his past convictions. This link is more than mere coincidence. By

admitting the dates of his prior license suspension, Robles establishes the BMV record, later entered as Exhibit 8, is his. This BMV record contains matching addresses and dates of convictions for OWIs in White and Tippecanoe counties and connects the documentary evidence. The trial court was presented with sufficient evidence that Robles was convicted of at least two prior OWIs and we will not reweigh the evidence on appeal.

### **Conclusion**

We find that sufficient evidence existed to support the convictions for Class D felony OWI with a prior OWI, Class D felony OWI over .15 with a prior OWI, and being an habitual substance offender. We affirm.

Affirmed.

CRONE, J., and BRADFORD, J., concur.